FILE COPY

JAN 3 1950

CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1949

No. 430

THE UNITED STATES OF AMERICA, on relation of JAMES W. MOBLEY, RELATOR, PETITIONER,

versus

GENERAL THOMAS T. HANDY, Commanding Officer, Fort Sam Houston, RESPONDENT

Petitioner's Motion For Rehearing

BEN F. FOSTER,
405 South Texas Building,
San Antonio 5, Texas,

R. G. HARRIS,
405 South Texas Building,
San Antonio 5, Texas,

WILLIAM C. DAVIS,
417 South Texas Building,
San Antonio 5, Texas,
Attorneys for Petitioner.

LODOVIC PRINTING CO., SAN ANTONIO, TEXAS

Supreme Court of the United States

OCTOBER TERM, 1949

No. 430

THE UNITED STATES OF AMERICA, on relation of JAMES W. MOBLEY, RELATOR, PETITIONER,

versus

GENERAL THOMAS T. HANDY, Commanding Officer, Fort Sam Houston, RESPONDENT

PETITIONER'S MOTION FOR REHEARING

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner in the above styled cause files this his motion for rehearing, and says:

This motion for rehearing should be granted because of the importance of the question of federal law involved which should be settled by this court, the lower court having erred in holding that jurisdiction existed in the military to arrest petitioner within the United States; because,

On the date of the arrest of petitioner within the United

States, the uncontroverted facts here controlling on the question of jurisdiction, were these, namely:

That petitioner was a civilian having no connection with the military; that he was arrested by the military in Houston, Texas, within the territorial jurisdiction of the United States, and was taken into custody and held by military authority for removal from the territorial limits of the United States to a point without the territorial jurisdiction of the United States, towit, Germany; that the United States was at peace (Article of War 2[d]); that petitioner was not a person under sentence of a court-martial (Article of War 2[e]), but had merely had charges preferred against him while he had been without the territorial limits of the United States.

On these controlling facts, the ultimate controlling question is, whether in time of peace, the military authorities have jurisdiction of arrest over a civilian not under any sentence of a court-martial while such civilian is within and not without the territorial jurisdiction of the United States?

The lower court held the military had jurisdiction to arrest petitioner in the United States. We respectfully urge that the lower court was in error in so holding, and that the question is of such importance to civilians of the United States that this court should interpose and settle the question whether in the opinion of this court the lower court were right or wrong.

WHEREFORE, petitioner prays as he has heretofore in his petition for writ of certiorari prayed.

Petitioner certifies by counsel whose name is signed and subscribed that this motion for rehearing is presented in good faith and not for delay, that the petition is restricted to the grounds hereinbefore set out.

Ben F. Foster

BEN F. FOSTER,
405 South Texas Building,
San Antonio 5, Texas,

R. G. HARRIS,
405 South Texas Building,
San Antonio 5, Texas,

WILLIAM C. DAVIS,
417 South Texas Building,
San Antonio 5, Texas,

Attorneys for Petitioner.